

CHAPTER 11 - PRIVACY

1. PURPOSE. This policy establishes Agency principles for protecting the privacy of individuals who are identified in the Environmental Protection Agency's information systems and informs Agency employees and officials of their rights and responsibilities under the Privacy Act (5 U.S.C. 552a). It supplements the EPA regulations in Part 16, Title 40, Code of Federal Regulations (CFR) and the Agency's Privacy Act Manual.

2. SCOPE AND APPLICABILITY. This policy applies to an records under the control of the Agency from which information on a subject individual is retrieved by a personal identifier assigned to the individual. The identifier may be the name of the individual, a number, a symbol or any other specific retriever assigned to such individual. This policy applies to such records maintained by the Agency in-house or maintained by a contractor or grantee on behalf of the Agency to accomplish an Agency function.

3. BACKGROUND. In order to protect individual privacy, Congress passed the Privacy Act of 1974 (5 U.S.C. 552a) which sets forth requirements for Federal agencies when they collect, maintain or disseminate information about individuals. The Act requires that Federal agencies respect the privacy of individuals by (a) collecting a minimum of information necessary on individuals, (b) safeguarding the information and (c) allowing individuals to inspect and correct any erroneous information. The EPA has developed this policy and the Privacy Act Manual to implement these requirements.

4. AUTHORITIES.

- a. The Privacy Act of 1974, 5 U.S.C. 552a, as amended.
- b. OMB Circular No. A-130, Management of Federal Information Resources.
- c. OMB's Privacy Act Implementing Guidelines published at 40 Federal Register 28948.
- d. 40 CFR Part 16, EPA's Privacy Act Regulations.

5. POLICY.

- a. The Agency will safeguard personal privacy in its collection, maintenance, use and dissemination of information about individuals and make such information available to the individual in accordance with the requirements of the Privacy Act.
- b. To the greatest extent practicable, information about an individual shall be collected directly from the individual if the information may be used to make decisions with respect to the individual's rights, benefits and privileges under Federal programs.
- c. Information that the Agency collects and maintains about individuals shall be relevant and necessary to the accomplishment of the Agency's purpose as required by statute or Executive Order. The office concerned shall establish the relevancy of and need for the information, as well as the authority to collect it.
- d. The information that is maintained in a System of Records shall be kept as accurate, relevant, current and complete as possible to ensure fairness to the individual.
- e. At least sixty days prior to creation of a new System of Records or .significant alteration to an existing System, the Agency shall' submit documentation to OMB an the Congress and publish a notice of the System in the Federal Register.
- f. When EPA creates a new Privacy Act system of records, it must prepare a written Privacy Act Statement. Each time the Agency requests that an individual provide information, including a social security number, to be maintained in the Privacy Act system of records, the Privacy Act Statement shall be made available to the individual. The Statement will inform the individual of the legal authority for collecting the information, whether disclosure of the information by the individual is mandatory or voluntary, the purpose for which the information is being collected, the routine uses which may be made of the information, and the effects on the individual if the individual does not provide the information. When EPA asks an individual

to provide his or her social security number and that number is not to be incorporated into a Privacy Act system of records, the Agency must, nevertheless, inform the individual of the authority for collecting the social security number, the uses to be made of the number, and whether disclosure of the number by the individual is voluntary or mandatory.

g. The Agency, upon written request from a subject individual, shall notify the individual that it is maintaining a record on him/her and must grant the individual access to the record, unless the Agency has published a rule exempting the System of Records from this requirement. In addition, the Agency shall amend such record upon request, unless the Agency has published a rule exempting the System from this requirement, whenever the subject individual proves that the record is not accurate, relevant, current or complete. If the Agency does not grant access to or amend an individual's record upon request, it shall inform or amend such record and advise him/her of his/her appeal rights.

h. The Agency must not disclose information from records maintained in a System of Records to any person or agency, except with the written consent of the individual to whom the record pertains. There are, however, twelve exceptions which permit disclosures without consent of the individual. Any other disclosure of the records (other than to the subject individual) is unauthorized. See the Privacy Act Manual for further discussion of these exceptions.

i. Except for disclosures to EPA officials and employees with an official need to know and disclosures required to be made under the Freedom of Information Act, an accounting of the disclosures that are made from a System of Records must be maintained by the System Manager. Each accounting must include the date, nature and purpose of disclosure and the name and address of the person or agency to whom the disclosure was made. The accounting must be retained for the life of the record or for five years after disclosure, whichever is longer.

6. RESPONSIBILITIES.

a. The Assistant Administrators, Inspector General, General Counsel, Associate Administrators, Regional Administrators, Laboratory Directors and Headquarters Staff Office Directors are responsible for:

11-3

IRM POLICY MANUAL

2100

7/21/87

7/21/87

(1) Implementing the Privacy Act and the requirements specified in this policy and the Privacy Act Manual within their respective areas. They are responsible for designating an appropriate EPA employee to serve as System Manager for an existing or proposed System of Records.

b. Director, Information Management and Services Division, (IMSD), Office of Information Resources Management is responsible for providing overall management and policy guidance.

c. The Chief, Information Management Branch, IMSD, is the Privacy Policy Officer and is responsible for policy, procedures and oversight of the Act. He/she administers activities related to establishment, alteration or termination of Systems.

d. The General Counsel serves as the EPA Privacy Appeals Officer and is responsible for interpreting the Act, reviewing Privacy Act notices, regulations, policy statements and related documents for legal form and substance and deciding all written appeals of negative determinations.

e. The Director, Personnel Management Division is responsible for reviewing proposed or altered systems for personnel management implications.

f. Each Manager and Supervisor is responsible for implementing the provisions of this Manual and the Privacy Act Manual within their respective areas.

g. The System Manager is responsible for:

(1) Applying approved Privacy Act policies and procedures relating to an existing or proposed System of Records and, when appropriate, implementing additional practices and

procedures to cover special conditions or situations that may arise within the System of Records. In addition, the System Manager is responsible for:

(a) Preparing documentation required by the Privacy Act, including notices of new, altered or terminated System of Records for publication in the Federal Register.

11-4

IRM POLICY MANUAL

2100

7/21/87

(b) Making initial decisions whether to grant an individual access to his/her records or amend such records and whether to extend the date of initial determination concerning requests for access to or amendment of records under the Act.

(c) Safeguarding the System under his/her jurisdiction.

(d) Informing employees having access to a System of Record of the penalties under the Privacy Act.

7. DEFINITIONS.

a. "Access" means availability of a record to a subject individual.

b. "Disclosure" means the availability or release of a record to anyone other than the subject individual.

c. "Individual" means a citizen of the U.S. or an alien lawfully admitted for permanent residence. It does not include businesses or corporations and, in certain circumstances, may not include sole proprietorships, partnerships or persons acting in a business capacity identified by the name of one or more persons.

d. "Maintain" means to collect, use or disseminate when used in connection with the term "record"; and, to have control over or responsibility for a System of Records when used in connection with the term, "System of Records."

e. "Personal identifier" is any individual number, symbol or other identifying designation assigned to an individual,

but not a name, number, symbol or other identifying designation that identifies a product, establishment or action.

f. "Record" means any collection or grouping of information about an individual that is maintained by the agency, including but not limited to the individual's education, financial transactions, medical history and criminal or employment history and that contains his/her name or an identifying number, symbol or other identifier assigned to the individual, such as a finger or voice print or photograph.

11-5

IRM POLICY MANUAL

2100

7/21/87

7/21/87

g. "Routine use" means, with respect to the disclosure of a record to a person or agency other than EPA, the use of a record for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the Freedom of Information Act, 5 U.S.C. 552. It does not include other disclosures which are permitted to be made without the consent of the subject individual pursuant to Section 552a(b) of the Privacy Act, such as disclosures to EPA employees who have official need for the record, to the Bureau of the Census, to the General Accounting Office or to the Congress.

h. "Subject individual" is the individual to whom a record pertains.

i. "System Manager" is the EPA employee designated as the responsible manager of a System of Records.

j. "System of Records" within the meaning of the Privacy Act is a group of any records under the control of the Agency from which information is retrieved by an individual's name or some personal identifier, such as a social security number assigned to the individual.

8. PROCEDURES AND GUIDELINES. Procedures for carrying out the provisions of this Chapter are found in the Privacy Act

Manual. Other guidance is found in:

a. Forms Management Manual, Chapter 1, for forms developed in connection with the Privacy Act.

b. Federal Acquisition Regulations Subpart 24.1 and EPA Acquisition Regulations Subpart 15-24.1 for contracts involving collection and maintenance of information on individuals.

c. Delegations Manual 1-33 for authority to make determinations on appeals from the initial denial and to make determinations on correction or amendment.

d. Reports Management Manual, Chapter 4, for policy on collecting information from the public.

e. Records Management Manual, Chapters 1 and 3, for management and disposal of records.

11-6

IRM POLICY MANUAL

2100

7/21/87

f. Freedom of Information Act Manual for Freedom of Information procedures.

g. Federal Register Document Drafting Handbook for preparation of Federal Register documents.

h. Facilities and Support Services Manual, Security Volume, Part III, Chapter 13, for security requirements for Privacy Act data.

9. PENALTIES. The Privacy Act imposes criminal penalties directly on individuals if they violate certain provisions of the Act. Any Federal employee, for instance, is subject to a misdemeanor charge and a fine of not more than \$5,000 whenever such employee:

a. Knowing that disclosure is prohibited, willfully discloses in any manner records in a System of Records to any person or agency not entitled to access to such records.

b. Willfully maintains a System of Records without publishing the prescribed public notice on the System in the Federal Register.

c. Knowingly and willfully requests or obtains any record from any System of Records under false pretenses. (The penalty for violation of this provision is not limited to Federal employees).

(The System Manager is responsible for making employees working with a System of Records fully aware of these provisions and the corresponding penalties.)